IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COCP No. 953 of 2000
Date of Decision: 19.07.2007

R.P. Girdhar ...Petitioner

Versus

Shri Prem Parshant and another ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Rajiv Atma Ram Senior Advocate, with
Shri Ashish Grover, Advocate,for the petitioner.

Shri Sidharth Sarup, AAG, Haryana.

Shri Girish Agnihotri, Senior Advocate, with
Shri Vijay Pal, Advocate, for respondent No.2.

HEMANT GUPTA, J.

In the present contempt petition, the claim of the petitioner is that he is entitled to the pay scale of Rs.4500-7300 with effect from 1.1.1986 i.e. the pay scale granted to the juniors to the petitioner. Since the said pay scale has not been granted to the petitioner inspite of the directions of this Court dated 7.6.1991 as affirmed by the Division Bench on 8.9.1995, therefore, the respondents have violated and wilfuly disobeyed the order passed by this Court.

The petitioner along with few other employees of the State of Haryana, filed Civil Writ Petition No. 11573 of 1988 claiming that the petitioners are senior as per the seniority list of Haryana Education Service Class-II, as it stood on 1.1.1985 and even in the Haryana Education Service Class-I, as it stood on 1.1.1986, but the benefit of selection grade of

Rs.1200-1840 has been granted to the members on the college side but not to the members of the school and inspection cadre. It is asserted that in fact both the streams constitute a common cadre. The claim of the petitioners in the writ petition for the higher pay scale was based upon circular dated 24.2.1988, which reads as under:-

"No.5/2/87-Edu-I(i).

From

The Commissioner and Secretary to Govt.
Haryana, Education Department.

To

The Director of Higher Education
Haryana Chandigarh

Dated Chandigarh the 24/2/1998

Subject: Revision of pay scale of Teachers of Universities and Colleges.

Sir,

In the light of the recommendations of University Grants Commission and having regard to the decisions of the Govt. of India conveyed vide their letter No. FI.21/87-U-I, dated 17th June, 1987, and Even No. dated 7th Sept., 1987, the Governor of Haryana is pleased to revise the pay scales of the following categories of teaching personnel with effect from 1.1.1986 as per details given below:-

Universities

Designation	Existing Pay Scale	Revised Pay Scale
Lecturer	Rs.700-1600	2200-75-2800-100-4000
Lecturer (Sr.Scale)	Not existing	3000-100-3500-125-5000

Designation	Existing Pay Scale	Revised Pay Scale
Lecturer (Selection Grade)	1200-1900	3700-125-4700-150-5700
Reader	1200-1900	3700-125-4700-150-5700
Professor	1500-2500	4500-150-5700-200-7300
Vice Chancellor	3000 (fixed)	7300-100-7600

Colleges:

Lecturer	700-1600	2200-75-2800-100-400
Lecturer (Sr. Scale)	Not existing	3000-100-3500-125-5000
Lecturer (Selection Grade)	1200-1840	3700-125-4700-150-5700
Principal i) ii)	1200-1900 1500-2500	Revised Scale of Reader and Professor in accordance with the criteria laid down in these instructions.

In support of their assertions that their juniors have been granted higher pay scale, the petitioners have attached their claim in a tabulated form attached as Annexures P.3 and P.4. In Annexure P.3, the petitioners have claimed revised grade of Rs.3700-5700 with effect from 1.1.1986, whereas in Annexure P.4, the petitioners have laid claim for the grade of Rs.4500-7300, again from 1.1.1986.

The civil writ petition filed by the petitioner and others, was allowed on 7.6.1991 on the basis of earlier judgments, holding that bifurcation of the cadre into school and college cadres is bad and ordered the preserving inter-se seniority. It was, thus, held that the petitioners are entitled to same pay scale and from the date, the juniors have been granted such pay scale. The operative part of the order dated 7.6.1991 reads as under:-

> "In view of the foregoing discussion, the writ petition is allowed and the respondents are directed to grant the petitioners the same pay scales w.e.f.

> the date the juniors have been granted vide impugned order dated 24.2.1988."

The appeal against the order dated 7.6.1991 was dismissed on 8.9.1995, but the directions issued by the learned Single Judge were limited upto April 11, 1986 i.e. the date when Haryana Education (College Cadre), Group Service Rules, 1986 came into existence. The operative part of the order reads as under:-

> "The appeal is, thus devoid of merit and is dismissed, leaving the parties to bear their own costs. It is, however, made clear that direction issued by the learned Single Judge would be limited to the relief granted to the petitioner only upto April 11, 1986 i.e. the date when the Haryana Education (College Cadre) Group-A Service Rules, 1986 came into existence. Petitioners shall be entitled to the relief asked for by them in the writ petition from the date their juniors were given the higher pay scale."

The petitioners along with his other co-employees filed a contempt petition before this Court, which was disposed of on 24.9.1996 with a direction that arrears in terms of Annexure R.1, shall be paid within a period of 3 months. Annexure R.1 is in fact, an order dated 20.9.1996 attached with the reply, wherein the pay of the petitioners was fixed in the pay scale of Rs.3700-5700. The petitioner submitted a representation on 25.12.1996 to the effect that his pay be fixed as per the pay of his juniors in the HES Class-I. Since the pay was not refixed, the petitioner filed Civil Writ Petition No. 9784 of 2000 before this Court for quashing of the order

dated 20.9.1996. This Court on 31.7.2000, dismissed the writ petition, by passing the following order:-

> "Heard learned counsel for the petitioner.
>
> The averments made in the petition indicate that already a judgment in favour of the petitioner has been passed by this court which, according to the petitioner, is not being complied with.
>
> It would be appropriate, if the petitioner at all moves a contempt petition. This petition is not entertained and is dismissed."

The present contempt petition was filed thereafter.

On the other hand, Mrs. Pushpa Abrol, one of the co-writ petitioners in CWP No. 11573 of 1998 filed Civil Writ Petition No. 5732 of 1998 seeking implementation of the judgment passed by the learned Single Judge dated 7.6.1991. The said writ petition was admitted on 1.11.1999. In fact, the petitioner has moved an application bearing Civil Misc. No. 7939-CII of 2002 that the present contempt petition and Civil Writ Petition No. 5732 of 1998 are for claiming the same relief but the facts have been given in much more detail in the writ petition and therefore, the writ petition be decided along with the present contempt petition.

The respondents have also appended an order dated 21.7.1997 (Annexure R.3) in pursuance of an order passed by a Division Bench of this Court on 21.3.1997 in Civil Writ Petition No. 4236 of 1996 filed by Smt. Pushpa Abrol and Smt. Kamla Chhikara, to decide the representation by passing a speaking order. In the said representation, the claim was for grant of selection grade of Rs.1200-1840 with effect from

1.12.1985 and pay scale of Rs.4700-5700 with effect from 1.1.1986. It was pointed out in the said order that the pay has been rightly fixed in accordance with Note IV Rule 4.4 (C) (II) of the Punjab Civil Service Rules Vol.I Part-1. It was pointed out that Smt. Pushpa Abrol has been granted pay scale of Rs.1200-1900 with effect from 16.12.1982 i.e. from the date her juniors on the school side were given the scale and that she is not entitled to selection grade of Rs.1200-1840 with effect from 1.12.1985 because she has already been granted the scale of Rs.1200-1900 with effect from 16.12.1982.

Another order dated 20.4.2001 (Annexure R.23) has been passed by the Commissioner & Secretary Education Department, Haryana, in pursuance of the directions of this Court dated 20.12.2000 in Civil Writ Petition No. 17353 of 2000 filed by the petitioner, wherein the representation (Annexure P.11) was ordered to be decided by passing a speaking order within four months. It was held that pay scale of Rs.4500-7300 is granted only to those HES Class-I Officers working on College side, who have put in total 25 years of service as Lecturer/Principals. It is the case of the petitioner that his pay is required to be fixed in the scale of Rs.4500-7300 i.e. the pay scale given to the juniors of the petitioner, which have not been complied with as the pay of the petitioner has been fixed only in the scale of Rs.3500-5700. Therefore, the orders passed by this Court, have not been implemented in its letter and spirit.

On the other hand, it is the stand of the respondents that three speaking orders have been passed denying the benefit of pay scale of Rs.4500-7300 and such orders have not been challenged by the petitioners in the appropriate proceedings. The legality and validity of such orders

cannot be examined in the contempt proceedings. It is pointed out by the learned counsel for the petitioner that in fact, the order dated 20.9.1996 was challenged by the petitioner in the writ petition but the writ petition was not entertained. It is also contended that Civil Writ Petition No. 5732 of 1998 is pending before this Court, wherein the claim of pay scale of Rs.4500-7300, is subject matter of consideration.

The learned counsel for the petitioner has argued that the petitioner cannot be made remediless as he has approached the jurisdiction of the contempt Court in terms of the liberty granted by the writ Court and therefore, the question whether the petitioner is entitled to pay scale of Rs.4500-7300 is required to be decided in these proceedings itself. Shri Girish Agnihotri, learned Senior Advocate, appearing for respondent No.2 has stated that he has no objection if the legality and the validity of the orders passed by the authorities in terms of the directions issued by this Court, are examined and decided, so that the finality is attached to the claim of pay scale of Rs.4500-7300 by the petitioner. Thus, in view of the consent of the parties to decide the question of entitlement of pay scale of Rs.4500-7300 to the petitioner, I deem it appropriate to adjudicate upon the said claim in the present petition itself.

The entire claim of the petitioner emanates from the circular dated 24.2.1988. The revised pay scale of Rs.4500-7300 is the pay scale granted to a Professor working in the University. However, the said scale is also payable to a Principal in the Colleges. The pre-revised pay scale of Lecturers in the Colleges in the selection grade is Rs.1200-1840, whereas the revised scale is Rs.3700-5700. Therefore, the question is whether the petitioner, who admittedly was never promoted as Principal nor

there is any direction to promote him as Principal, is still entitled to pay scale of Rs.4500-7300 or he is entitled to equivalent revised pay scale of the post of Lecturer (Selection Grade).

In the order dated 7.6.1991, there is no mention to the pay scale, which has been granted to the juniors or which has to be allowed to the petitioner. During the course of arguments, learned counsel for the petitioner has made a reference to Gradation List (Annexure P.1) of HES Class-I Men's Branch and HES Class-I Women's Branch, as on 1.1.1986. Reference was also made to the fact that the name of the petitioner is at serial number 11, whereas name of Kishori Lal is at serial number 12. Kishori Lal has been granted the pay scale of Rs.4500-7300. Therefore, the petitioner is entitled to the pay scale of Rs.4500-7300. However, it could not be disputed that Kishori Lal is getting the said pay scale as the Principal of a College. Circular dated 24.2.1988 contemplates grant of pay scale of Rs.4500-7300 to a person, who is a Principal. Still further, in Annexure P.4, the petitioner have made reference of three juniors, who have been granted pay scale of Rs.4500-7300. The petitioner has described Kishori Lal in Column No. 7 in Annexure P.4. The petitioner has reflected Shri Kishori Lal and Shri Raj Pal as Principals and Shri S.C. Deva as a Director. In fact, all the persons named as juniors in Column No. 7 of Annexure P.4, who have been granted the pay scale of Rs.4500-7300/-, are the Principals. It appears that Deputy Director and the Principals are interchangeable posts and carry the same pay scale.

It is, thus, evident that the pay scale of Rs.4500-7300 has been granted to the incumbents holding the post of Principal and not to the incumbents holding the post of Lecturer (selection grade). Even in circular

dated 24.2.1988, the pay scale of Rs.4500-7300 is to be granted to the Principals only. It could not be pointed out that any junior Lecturer (Selection Grade), has been granted the pay scale of Rs.4500-7300.

The argument raised by the learned counsel for the petitioner that the respondents have been treating the College Cadre and the School & Inspection Cadre, as separate cadres, even though bifurcation of the cadre was set aside, is meaningless. In fact, even in the joint cadre, the juniors have been promoted as Principals of College and, therefore, they are entitled to the pay scale of the said post. It may be noticed that the petitioner was never posted as Principal nor any claim for promotion to the post of Principal, from the date their juniors were promoted, has been made or granted. Therefore, the petitioner cannot be granted the pay scale attached to the post of Principal, though the same has been granted to a person, who is reflected as junior in the gradation list. The direction of this Court dated 7.6.1991 that the petitioner has to be granted the same pay scale as has been granted to his junior(s), has to be read as a junior, who is similarly situated. The petitioner can draw parity with a person, who is similarly situated and not with a person, who is promoted to higher post i.e. the Principal.

In view of the above, I do not find any patent illegality or irregularity in the orders passed by the authorities granting the pay scale of Rs.3700-5700 to the petitioner. Consequently, the present petition is dismissed.

July 19, 2007 (HEMANT GUPTA)
ds JUDGE